



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan	Application 07-03-019 (Filed March 19, 2007)

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES  
AND SAN JOSE WATER COMPANY  
TO APPROVE SETTLEMENT AGREEMENT  
(SETTLEMENT AGREEMENT ATTACHED)**

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**I. INTRODUCTION**

Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules), the Division of Ratepayer Advocates (DRA) and San Jose Water Company (San Jose) submit this Motion to Approve the Settlement Agreement on Conservation Rate Design Issues (Settlement).<sup>1</sup>

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<sup>1</sup> Attached as Appendix A.

The proposed Settlement between DRA and San Jose fulfills the criteria that the Commission requires for approval of such Settlement. As explained below, the Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. For these reasons, the Commission should grant this Motion and adopt the proposed Settlement.

## **II. PROCEDURAL BACKGROUND**

As directed in Ordering Paragraph 5 of D.06-11-015 (San Jose's most recent general rate case), San Jose filed an Application on March 19, 2007 to implement the objectives of the Water Action Plan (Application or A.07-03-019). In its Application, San Jose requested: (1) increasing block rates for residential customers; (2) "a mechanism to protect ratepayers and SJWC from sales variations (WRAM);" (3) "a full cost balancing mechanism for water supply expenses;" (4) a memorandum account for "conservation program expenses;" and (5) "expansion of SJWC's existing water quality memorandum account."<sup>2</sup> On April 23, 2007, DRA filed a protest to the Application and identified several issues of concern.<sup>3</sup>

In the Commission order opening this proceeding, the Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities adopted on January 11, 2007 (the OII), the Commission consolidated A.06-11-010 and several other applications for conservation rates into the above-captioned proceeding. On May 29, 2007, San Jose's Application was also consolidated into the OII.<sup>4</sup> On January 29, 2007, Parties filed responses to the preliminary scoping memo contained in the OII, and a prehearing conference (PHC) was

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<sup>2</sup> Application at 2.

<sup>3</sup> In its Protest, DRA raised concerns about several issues, including the proposed WRAM, increasing block rates, full cost balancing account for water supply expenses, memorandum account to San Jose's conservation program expenses, and expansion of San Jose's existing water quality memorandum account.

<sup>4</sup> Administrative Law Judge's Ruling Consolidating Application of San Jose Water Company, Modifying Schedule and Addressing Phase I Hearings (May 29, 2007) at 3.

held on February 7, 2007. On March 8, 2007, the Commission adopted a final scope and two-phased schedule for this proceeding in an Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo). The Scoping Memo defined Phase 1 as follows:

The first phase of this proceeding will address rate-related conservation measures, including the parties' increasing block rate and Water Revenue Adjustment Mechanism (WRAM) proposals. Any settlements and motions proposing their adoption under Rule 12.1 of the Commission's Rules of Practice and Procedure shall be filed on or before April 23, 2007. In order to assess how any settlement addresses the rate-related conservation objectives identified in the OII, I will order the settling parties to discuss relevant issues in the motion proposing the settlement agreement and/or the settlement.<sup>5</sup>

On May 29, 2007, an Administrative Law Judge's Ruling Consolidating Application Of San Jose Water Company, Modifying Schedule And Addressing Phase I Hearings was filed ("May 29 Ruling"), and a schedule was established that, among other things, created Phase 1B in this proceeding. The May 29 Ruling specified that San Jose's Application would be considered in Phase 1B. An Administrative Law Judge's Ruling Modifying Phase 1B Schedule ("July 30 Ruling") modified the Phase 1B schedule established in the May 29 Ruling. On August 30, 2007, an Administrative Law Judge's Ruling Modifying Phase 1B Schedule ("August 30 Ruling") was issued, which further modified the Phase 1B schedule.

Pursuant to Rule 12.1(b), an all-party settlement conference was held at the Commission on October 12, 2007. DRA and San Jose subsequently entered into the attached Settlement Agreement.

### **III. SUMMARY OF PROVISIONS OF THE PROPOSED SETTLEMENT**

In the Settlement Agreement on Conservation Rate Design Issues Between DRA and San Jose, the Parties propose to implement a Trial Program consisting of two-tiered

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<sup>5</sup> Scoping Memo at 3 (footnote omitted).

increasing block rates for residential customers, and a pricing adjustment mechanism account that is similar to the balancing account (also referred to as a Water Revenue Adjustment Mechanism or WRAM) that the Commission adopted for California-American Water's Monterey District.<sup>6</sup> The Trial Program would be implemented 90 days after a Commission decision approving the Settlement.

#### **IV. SPECIFIC QUESTIONS IN THE SCOPING MEMO**

The Scoping Memo states that settling parties must provide certain information and respond to specific questions. The Parties respond to each of these questions in turn.

##### **A. Company Information For Designing Conservation Rates and Related WRAM**

"The motion and/or settlement agreement shall state whether the company has a low-income affordability program, metered service, and monthly or bimonthly bills."<sup>7</sup>

All of the customers served under San Jose's residential tariffs have metered service connections. The residential customers in San Jose's service areas are billed every two months, *i.e.*, bi-monthly.

San Jose has had a Water Rate Assistance Program (WRAP) for low-income customers since November 2005. For San Jose customers that meet the income qualification guidelines of Pacific Gas & Electric's California Alternative Rates For Energy (CARE) program, San Jose provides a 15% discount off of the total bills of eligible customers.<sup>8</sup>

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<sup>6</sup> D.96-12-005, 1996 Cal. PUC LEXIS 1066, \*56-62.

<sup>7</sup> Scoping Memo at 3.

<sup>8</sup> Special Conditions include eligibility criteria based on gross annual income and household size. Since sub-metered tenants living in mobile home parks are not customers of San Jose Water Company, any discount will be applied to the master meter on record. It is then the responsibility of the master metered account holder to distribute the discount to the appropriate tenant.

Because the appropriateness of San Jose's WRAP is not within the scope of this OII, DRA's silence on the merits of the program should not be construed as either approval or disapproval.

**B. Impact of Settlement on Low-Income Affordability**

"The motions shall address the impact of the settlement agreements on low-income affordability."<sup>9</sup>

As explained in more detail in a later section, the proposed Settlement establishes two tiers for the quantity rates of residential customers, rather than the three tiers proposed in San Jose's Application. The two rates are held constant across meter sizes. The Settlement provides for two rate schedules: For residential customers with meter sizes 5/8 by 3/4-inch, 3/4-inch and 1-inch, and for residential customers with meter sizes 1 and 1/2-inch and 2-inch meters. The Parties modified San Jose's initial rate design and established different breakpoints (and thus different consumption blocks) for different meter sizes, in order to minimize the effect of conservation rates on low-income customers.

San Jose has noted that it believes that many of its low income customers reside in multiple-unit buildings served by larger diameter meters and are identified as residential customers in San Jose's billing system. While the company does not have sufficient data to identify which of its customers are low-income and whether they live in multiple-unit buildings, DRA and San Jose determined that calculating different usage breakpoints for different meter sizes would allow more specific targeting of conservation pricing signals. Thus, the Parties used the actual average usage characteristics of customers by meter size, and increased the consumption breakpoints for larger meters (which increases the usage level at which the higher tiered rate is charged) to minimize the likelihood that low income ratepayers will be faced with inordinately high rates when conservation rates are implemented. Stronger conservation pricing signals can then be directed to these customers more gradually over time.

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<sup>9</sup> Scoping Memo at 3.

Targeted conservation pricing signals, such as using meter-based consumption blocks, are appropriate for achieving decreases in excessive water usage without penalizing the reasonable use of water. For example, for larger households, the consumption level at which usage should be considered “excessive,” and thus subject to higher quantity rates, should be higher than the level for smaller households. Even for residents of multiple unit buildings who do not pay for water service directly, breakpoints that vary by meter sizes are helpful because any increase in water rates will likely be passed on to them through higher rent.

The Parties also developed the quantity rates for the two-tiered rate design so that, in conjunction with the consumption blocks, average and low-use customers will see slight decreases or no changes to their bills. In addition, customers with low consumption see greater bill decreases due to a discounted Tier 1 rate.

**C. Proposed Conservation Rate Design**

“The motion and/or settlement shall discuss how increasing block rate levels and the percentages between them were determined and shall provide the settling parties’ position on whether the increase in rates between tiers will effectively promote conservation.”<sup>10</sup>

The proposed rate designs meet the Commission’s Water Action Plan objective of setting rates that encourage conservation. The conservation rates provide customers with a greater financial incentive to conserve water which, in turn, will effectively promote conservation. With regard to the proposed increasing block rates in particular, customers will receive more accurate price signals because as they consume more, their average cost per unit will increase. Additionally, because the consumption breakpoints are based on usage patterns and seasonality specific to San Jose’s service area, customers will receive timely and appropriate signals to reduce their use. In other words, bills will increase in summer months, as they currently do, because of higher consumption that is largely attributable to outdoor use, but the economic incentive for ratepayers to reduce their

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<sup>10</sup> Scoping Memo at 3-4.

outdoor usage will be greater. Since the proposed rate structure discourages use beyond indoor use, Tier 2 customers will have an economic incentive to reduce their outdoor use.

The Parties established the consumption blocks and rate tiers based on the usage patterns and seasonality of the service area. The consumption block for Tier 1 includes usage up to the mid-point between a) the average monthly consumption over an entire year and b) the average monthly consumption during the winter months. The average winter usage has been used as a proxy of indoor water use. With the goals of sending a conservation pricing signal and achieving revenue neutrality,<sup>11</sup> the rate for Tier 1 is discounted relative to the single quantity rate by about 3.2%. For Tier 2, the consumption block is all usage above Tier 1 consumption, and the rate is 10% greater than the Tier 1 rate.

The Parties do not propose tiered quantity rates for other metered customer classes, such as business, industrial, public authority, resale, private fire, and reclaimed/recycled customers. The Parties agreed that tiered quantity rates for these customer groups are not currently necessary because approximately 81% of the total revenue from these customer classes already is collected through the volumetric (or quantity) rate in accordance with the conservation guidelines. General Metered Service to the approximately 400 customers in the Mountain District is already provided under steep tiered rates due to severe capacity restrictions.

Furthermore, the Parties do not propose modification of the meter charges for any customer class. DRA and San Jose chose not to change the service charge authorized in D.06-11-015 because, on an overall revenue basis, San Jose is recovering about 73.4% of its revenue through volumetric rates. Considering revenue from residential customers

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<sup>11</sup> In designing conservation rates, the target revenue is the portion of the revenue requirement that is recovered through the quantity (volumetric) charge(s). In shifting from a single quantity rate to a two-tiered quantity rate, the Parties run a rate design model with various assumptions and adjustments using the target revenue. The Parties adjusted the consumption blocks and tiers so that the revenue that the Parties anticipate San Jose will receive under conservation rates approximates the target revenue, the revenue that San Jose would have received under single quantity rates. As a result of the price-based revenue adjustment mechanism,



only, 69.2% of revenue is recovered through volumetric rates, while 80.93% of its non-residential revenue is recovered through volumetric rates. Consequently, DRA and San Jose came to the conclusion that the rate design met the intent of BMP 11 and that it would be inappropriate to allocate a greater amount of fixed costs from the service charge to the quantity charge. The pertinent elements of the proposed conservation rates for residential customers are as follows:

Consumption Blocks:

- Block I – From zero to the midpoint between monthly annual average consumption and average winter use to ensure that consumers at low and average levels of consumption stay within Block I.
- Block II – The second block captures customers who have consumption greater than Block I levels (for example, if 13 ccf is the midpoint between monthly annual average consumption and average winter use for 5/8-inch and 3/4-inch meters, then Block II would start at 13 ccf).
- The same break points by meter size are maintained for 5/8 by 3/4, 3/4, and 1-inch diameter meters. The 3/4-inch diameter meter is presently the standard size meter for new residential service connections. The same break points by meter size are also maintained for 1 and 1/2-inch and 2-inch diameter meters.
- Using the same principles, different break points were set for 1.5-inch and 2-inch diameter meters.

Rate Tiers:

- Proposed rates are based on the tariff schedules that were issued in November 2006, in furtherance of the revenue requirement authorized by D.06-11-015.
- The Block I rate is a 3.2% decrease from the authorized single quantity rate.
- The Block II rate is 10% above the Block I rate to encourage water conservation, taking into account the consumption patterns of each meter size, and with the goal of achieving revenue neutrality as compared with the revenue that would have been collected using the single quantity rate.

Service Charge: The service charge was not changed for several reasons.

- First, the current service charge was modified as recently as 2006 as a result of the Commission's most recent San Jose GRC decision.

- Second, San Jose’s current service charge approximates the level being proposed by the California Urban Water Conservation Council in their proposed BMP 11; i.e. 70% of revenues recovered in the quantity charge.
- Third, retaining current service charges will ensure that San Jose will be able to meet its cash demands, thereby protecting its financial position.

For residential customers, an increase in the quantity charge, plus a two-tiered increasing block conservation rate design is proposed under the Settlement Agreement. The two-tier conservation rate design is based on consumption patterns and seasonality as determined by a consumption (bill frequency) analysis.

The source data for the consumption analysis were meter readings from calendar year 2006. All customers receiving service on the General Metered Service tariff schedule were classified by individual customer group (rate code), from which the customers categorized in the residential rate codes were extracted for analysis.

#### **D. Elasticity of Demand**

“The motion and/or settlement shall provide data on elasticity of demand, *e.g.*, how do they calculate it, what assumptions were included, what studies were referenced, and what timeframe was used.”<sup>12</sup>

San Jose proposed to apply a price elasticity factor in its conservation rate design. However, the Parties agree in the Settlement Agreement that there will not be a price elasticity factor applied to the calculation of the rates. Thus, anticipated demand response is not built into the rates proposed by this Settlement.

#### **E. Effect of Proposed Rate Structures**

“The parties shall provide charts which illustrate the effect of the proposed rate structures, such as marginal and/or average price curves. These charts shall include fixed and consumption charges.”<sup>13</sup>

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<sup>12</sup> Scoping Memo at 4.

<sup>13</sup> Scoping Memo at 4.

The Attachment to the Settlement Agreement contains numerous tables and charts that illustrate the impact of the proposed conservation rates on residential customers in the San Jose's ratemaking area.

**F. Seasonal Rates**

“If the settlement agreements do not include seasonal rates, the parties shall state why they believe they are unnecessary.”<sup>14</sup>

The Parties agree that, as discussed above, the parameters for developing residential conservation rates incorporate the impact of seasonality of water use by using seasonal averages to establish consumption breakpoints.

**G. A Price-Based Revenue Adjustment Mechanism**

“The parties shall state whether the [Water Revenue Adjustment Mechanism] includes all or a subset of revenue and the basis for that determination.”<sup>15</sup>

The Parties propose that the Commission authorize San Jose to open a balancing account that is a “price-based” revenue adjustment mechanism (or pricing adjustment mechanism). The mechanism is “price-based” in that the goal is to adjust San Jose’s revenues for the difference between the current single quantity rate and the proposed conservation rates for actual quantities sold. The pricing adjustment mechanism will track the difference between revenue received for actual sales under the tiered rate design and the revenue San Jose would have received if standard (single quantity rate) rate design was used for its volumetric charges. Put another way, the proposed pricing adjustment mechanism will account for the difference between actual billed monthly consumption at the conservation rates, as compared with the uniform rates that otherwise would have applied. An account balance will reflect either an under-collection of revenues to be recovered through a surcharge on ratepayers, or an over-collection of revenues to be given back to ratepayers through a surcredit.

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<sup>14</sup> Scoping Memo at 4.

<sup>15</sup> Scoping Memo at 4.

This pricing adjustment mechanism is different from a “conventional” water revenue adjustment mechanism that completely decouples revenues from sales. The proposed mechanism for San Jose is the same type of balancing account that the Commission adopted for California-American Water’s WRAM for its Monterey District (also referred to as a “Monterey-style WRAM”). As discussed in greater detail below, a ratemaking mechanism that completely decouples revenues from sales is not appropriate for San Jose because of unique water supply constraints faced by San Jose.

### **1. San Jose’s Water Supply**

The Santa Clara Valley Water District (“SCVWD”) has the overall responsibility for the management of water resources in Santa Clara County, and also acts as the permitting agency. On an annual basis, the SCVWD establishes the price of purchased water charged to local distribution utilities as well as the level of extraction charges (pump tax) charged to entities that pump water in its jurisdiction. San Jose relies heavily on imported surface water obtained by purchase from the SCVWD. The principal sources of water for the SCVWD are the State Water Project transported via the South Bay Aqueduct and the Federal Central Valley Project.

According to the water supply mix adopted in D.06-11-015, 46% or more of San Jose’s water supply is purchased (or treated) water that comes from SCVWD. Approximately 45% of the adopted water supply mix is pumped groundwater from 1079 wells owned by San Jose. In an average year, surface water provides about 9% of the water supply in the current water supply mix. However, the level of surface water available each year varies significantly depending on the amount of run-off collected in San Jose’s Santa Cruz Mountains reservoir and the diversions available from the watersheds of the Los Gatos and Saratoga Creeks.

San Jose obtains its purchased water through a long-term “take-or-pay” contract with the SCVWD (“SCVWD Contract”) for a supply of treated water.<sup>16</sup> The seventy-

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<sup>16</sup> Contract Between Santa Clara Valley Water District and San Jose Water Works for a Supply of Treated Water (entered into on January 27, 1981) (“SCVWD Contract”).

year contract is in effect until approximately year 2051. The take-or-pay provision requires that, for every three-year water delivery schedule, San Jose must pay for at least 90% of the water scheduled over the three-year period. For each new three-year schedule, San Jose must contract for a minimum of 95% of the highest amount of water contracted for in any one year of the previous three-year schedule.<sup>17</sup>

The Santa Clara groundwater basin has not been adjudicated but is managed by the SCVWD. On an annual basis, the SCVWD establishes the level of the groundwater charges (or pump tax) and collects these charges from entities such as San Jose that are operating groundwater-producing facilities within the SCVWD's jurisdiction. According to D.06-11-015, the groundwater charge (or pump tax) has been set at a level that makes the overall production cost of pumping groundwater from San Jose wells comparable in price to that of purchased water.

## **2. San Jose's Pricing Adjustment Mechanism**

The pricing adjustment mechanism that the Trial Program would implement for San Jose is substantially similar to the water revenue adjustment mechanism for California American Water's Monterey District. When customers react appropriately to the pricing signals inherent in inclining block rates, overall demand is reduced and the related revenue variation is tracked in the balancing account for the pricing adjustment mechanism. The proposed mechanism does not fully decouple revenue from sales (as a "full" water revenue adjustment mechanism (or "full WRAM") would). Instead, the pricing adjustment mechanism only adjusts revenues to reflect the difference between the proposed conservation rates and the current rates for the actual quantities sold.

Conceptually, the pricing adjustment mechanism provides San Jose with a revenue amount that is "adjusted" for price as follows: Taking the actual water amount sold in a month, the single quantity rate is applied to calculate what can be described as an

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<sup>17</sup> SCWVD Contract at 6-7 (Article C, Sections 3-4). In addition, however, for any year during the three-year period, water taken in excess of 90% can be credited toward meeting the minimum charge for other years in that time period. SCWVD Contract at 7 (Article C, Section 4).

“adjusted” revenue amount for that month. The difference between the “adjusted” revenue and the actual revenue San Jose received in that month (under conservation rates) is reflected in the balancing account. The surcharges or surcredits issued to ratepayers to address under or over-collections, respectively, in the account effectively “true up” (or “true down”) San Jose’s revenue to the “adjusted” revenue.

The Parties agree that this pricing adjustment mechanism is a proper regulatory response to San Jose’s water supply situation and will foster the gradual transition proposed by the Parties to a more aggressive increasing quantity rate design. Because San Jose has a water supply that is constrained by its reliance on SCVWD for almost half of its water, the disincentives to water conservation that water utilities are reputed to have absent a conventional WRAM do not apply. The proposed pricing adjustment mechanism will ensure that the interests of customers continue to be served by retaining existing incentives for efficient operation because revenue will be trued-up to exactly the same level that would have been generated by uniform rates. Under current conditions, the Parties agree that the pricing mechanism described herein adequately ensures the recovery of sufficient revenue.

### **3. The Pricing Adjustment Mechanism Will Not Track Revenues Recovered through the Meter/Service Charge**

Approximately 69.2% of San Jose’s operating revenue from residential customers is recovered through the quantity charge, while 73.4% of total operating revenue is recovered through the quantity charge. San Jose’s rates are in compliance with the BMP 11 conservation threshold of 70% of revenue to be recovered from quantity rates. Therefore, no changes were proposed in the Settlement to the existing service charges. Further, service charges will not need to be tracked in a pricing adjustment mechanism.

### **4. How The Pricing Adjustment Mechanism Works**

The following tables provide sample calculations illustrating how the pricing adjustment mechanism proposed for San Jose would work:

### **Example of Pricing Adjustment Mechanism Calculation**

#### **Residential 5/8x3/4-inch, 3/4-inch and 1-inch Meters**

Block	Inverted Block Rate	Uniform Rate	Difference	Hypothetical Recorded Usage (ccf)	
13 ccf	\$2.1000	\$2.1745	(\$0.0745)	22,323,212	(\$1,663,079)
Excess	\$2.3090	\$2.1745	\$0.1345	12,543,169	\$1,687,056
(Surcharge)/Surcredit					\$23,977

#### **Residential 1.5-inch and 2-inch Meters**

Block	Inverted Block Rate	Uniform Rate	Difference	Hypothetical Recorded Usage (ccf)	
26 ccf	\$2.1000	\$2.1745	(\$0.0745)	254,267	(\$18,943)
Excess	\$2.3090	\$2.1745	\$0.1345	402,605	\$54,151
(Surcharge)/Surcredit					\$35,208

#### **Residential All Meters**

Block	Inverted Block Rate	Uniform Rate	Difference	Hypothetical Recorded Usage (ccf)	
Low Tier	\$2.1000	\$2.1745	(\$0.0745)	22,577,479	(\$1,682,022)
Excess	\$2.3090	\$2.1745	\$0.1345	12,945,774	\$1,741,207
(Surcharge)/Surcredit					\$59,185

#### **H. Effective Date of Conservation Rate Design**

“The parties shall justify whether the conservation rate design proposal should be effective after completion of this proceeding or after the next GRC.”<sup>18</sup>

The Trial Program is to become effective 90 days after a decision by the Commission adopting the Settlement. The Trial Program will be reviewed in San Jose’s next GRC filing (currently scheduled for January 2009 under decision D.07-05-062 in the Rate Case Plan Rulemaking, R.06-12-016). Adjustments to the proposed conservation rates can be made at that time as necessary.

#### **I. Customer Education and Monitoring**

“The parties shall propose customer education initiatives necessary to implement the settlements, including outreach efforts to limited English proficiency customers, monitoring programs to gauge the effectiveness of the adopted conservation rate design, and recommendations on how these results will be reported to the Commission.”<sup>19</sup>

San Jose agrees to work with DRA and other consumer groups to develop a customer education and outreach program to be implemented in conjunction with the proposed conservation rate design. San Jose also agrees to work with DRA and other consumer groups to examine how to evaluate and report the effectiveness of conservation rates. The customer education initiatives and the monitoring methods developed will be documented in a memorandum of understanding or a separate settlement agreement.

#### **V. THE SETTLEMENT MEETS THE CRITERIA UNDER RULE 12.1**

Rule 12.1 requires that a settlement be “reasonable in light of the whole record, consistent with law, and in the public interest.” The Settlement Agreement meets these requirements. First, the Settlement is reasonable in that it takes into account the requirements of D.06-08-015, the Commission’s Water Action Plan, the principles of

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<sup>18</sup> Scoping Memo at 4.

<sup>19</sup> Scoping Memo at 4.



conservation rate design as enumerated above, and underlying data unique to San Jose, including consumption and billing data. Extensive settlement negotiations were accomplished over the course of several weeks. The Parties fully considered the facts and the law relevant to this case, and reached reasonable compromises on most of the issues raised in San Jose's Application.

Secondly, the Parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement. The issues resolved in the Settlement are within the scope of the proceeding. The Settlement produces just and reasonable rates.

Finally, the Settlement is in the public interest. The principal public interest affected by this proceeding is delivery of safe, reliable water service at reasonable rates. The Settlement advances this interest because it fairly balances San Jose's opportunity to earn a reasonable rate of return against the needs of consumers for reasonable rates and safe, reliable water service. The Settlement is also consistent with the Commission's Water Action Plan objective for setting rates that balance investment, promote conservation, and ensure affordability. In addition, Commission approval of the Settlement will provide speedy resolution of contested issues, will save unnecessary litigation expense, and will conserve Commission resources. The Commission has acknowledged that "[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation." *Re PG&E*, D. 88-12-083, 30 CPUC 2d 189, 221.

In sum, the Parties believe that the Settlement and the related documentation convey sufficient information for the Commission to discharge its future regulatory obligations. Thus, taken as a whole, the Settlement satisfies the Commission's standards for approving settlements presented to it.

The Parties have entered into this Settlement on the basis that the Commission's adoption not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. Furthermore, the Parties intend that the Commission's adoption of this Settlement not be construed as any statement of precedent or policy of any kind for or against them in any current or future proceedings. Finally,

the Settlement is an integrated agreement, so that if the Commission rejects any portion of the Settlement Agreement, each Party has a right to withdraw.

## **VI. CONCLUSION**

For the reasons discussed above, DRA and San Jose urge the Commission to approve the Settlement Agreement proposing to implement increasing block rates for residential customers and a price-based revenue adjustment mechanism.

Respectfully submitted,

/s/ NATALIE D. WALES

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November 14, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND SAN JOSE WATER COMPANY TO APPROVE SETTLEMENT AGREEMENT**” in I0701022 etal., by using the following service:

[ X ] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **November 14, 2007** at San Francisco, California.

/s/ Angelita Marinda

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ANGELITA MARINDA

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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